

W.P(MD)No.11150 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHL, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P(MD)No.11150 of 2016

and

W.M.P(MD)No.8571 of 2016

Refex Energy Ltd.,
Through its
Managing Director,
Having registered office at
No.13, Kanakapillai Street,
Vannar Lane, Avaniyapuram,
Madurai - 12.

: Petitioner

Vs.

1.Union of India,
Through its
Secretary (Legislative),
Ministry of Law and Justice,
Government of India,
4th Floor, A-Wing, Shastri Bhavan,
New Delhi - 110 001.

2.M/s.Passive Infra Projects Pvt. Ltd.,
Through its Director,
Sh.Varun Agrawal,
Having Office at 182,
Vaishali, Pitampura,
Delhi - 110 088.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Declaration, declaring Section 142(2) of the Negotiable Instruments Amendment Act, 2015, as ultra vires Article 14 of the Constitution of India.

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For Petitioner : Mr.K.Govindarajan
for Mr.Srinath Sridevan

For Respondents : Mr.D.Saravanan for R.1
No appearance for R.2

ORDER

[Order of the Court was made by **Subramonium Prasad, J.**]

The instant challenge is to the amendment to Article 142(2) of the Negotiable Instruments Act, primarily on the ground that the amendment goes completely contrary to the judgment of the Honourable Supreme Court in ***Dashrath Rupsingh Rathod v. State of Maharashtra*** reported in ***AIR 2014 Supreme Court 3519***.

2. The contention of the learned Counsel for the petitioner is that this amendment amounts to setting at naught a judgment of the Honourable Supreme Court which is not permissible in law. The contention of the petitioner cannot be accepted. It is well settled right from the decision in ***Shri Prithvi Cotton Mills Ltd., etc., v. Broach Borough Municipality and others reported in AIR 1970 Supreme Court 192*** that Legislation can take away the basis of a judgment.

3. The Honourable Supreme Court in ***Dashrath Rupsingh Rathod*** (supra) summed up the law relating to the place of suing as under:

“56. To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

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(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

4. In order to resolve the concerns regarding the said judgment, the President of India promulgated an Ordinance, called Negotiable Instruments (Amendment) Ordinance, 2015. The said Ordinance, thereafter, became an Act, namely, Negotiable Instruments (Amendment) Act, 2015. Amendments were made by the Negotiable Instruments

(Amendment) Act, 2015, which read as under:

“An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 15th day of June, 2015.

2. In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), in section 6,—

(i) in Explanation I, for clause (a), the following clause shall be substituted, namely:—

'(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

(ii) after Explanation II, the following Explanation shall be inserted, namely:—

'Explanation III.—For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.'.

3. In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

4. In the principal Act, after section 142, the following section shall be inserted, namely:—

"142A.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as

amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the

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first case was filed and is pending, as if that sub-section had been in force at all material times.

5. (1) The Negotiable Instruments (Amendment) Second Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.”

5. By virtue of the said amendment, the entire basis of the judgment of ***Dashrath Rupsingh Rathod*** (supra) has been removed. The power of the Legislature to take away the basis of a judgment by making amendments is well settled. It is trite law that the Legislature can take away the basis of the judgment of a judicial pronouncement by either passing a Validating Act or passing amendments to the parent Act. [Refer. ***State of Karnataka v. Karnataka Pawn Brokers Association and others*** reported in (2018) 6 SCC 363; ***State of Karnataka v. Pro Lab and others*** reported in (2015) 8 SCC 557; ***Shri Prithvi Cotton Mills Ltd., etc., v. Broach Borough Municipality and others*** reported in AIR 1970 Supreme Court 192; ***Gujarat Ambuja Cements and another v. Union of India and another*** reported in (2005) 4 SCC 214; ***State Bank's Staff Union (Madras Circle) v. Union of India and others*** reported in (2005) 7 SCC 584]

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6. In view of the above, there is no infirmity in the amendment. Even otherwise, the Parliament is competent to bring out the amendment under the Negotiable Instruments Act. The said amendment cannot be said to be ultra vires in view of the provisions of the Act or Part III of the Constitution of India. The amendment cannot also be called to be manifestly arbitrary in the absence of any materials on record.

7. Accordingly, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petition is also dismissed.

[A.P.S.,CJ.] [S.P.,J.]
18.12.2019

Index : Yes/No
MR/RSB

To

The Secretary (Legislative),
Ministry of Law and Justice,
Government of India,
4th Floor, A-Wing, Shastri Bhavan,
New Delhi – 110 001.

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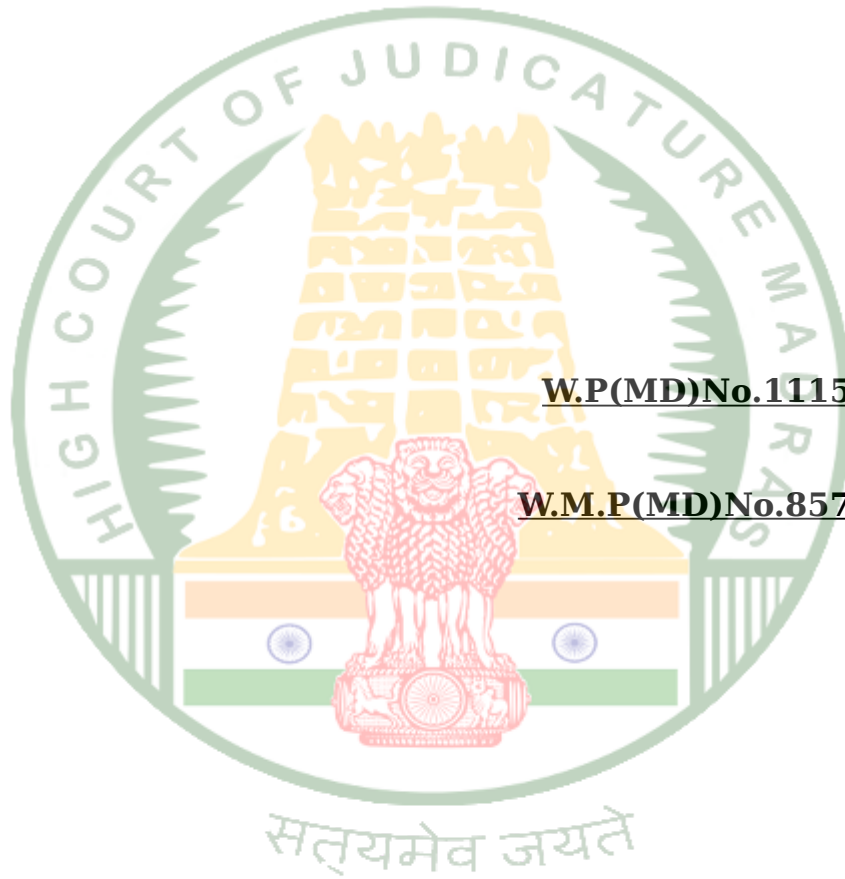
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